

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHAWN JAMES ALLEN WOODALL,) Civil No. 10-1127-BEN(WVG)
)
Petitioner,)
) ORDER DENYING RENEWED MOTION
v.) FOR APPOINTMENT OF COUNSEL
) (DOC. # 41)
GEORGE A. NEOTTI, Warden,)
)
Respondent.)

On May 24, 2010, Petitioner Shawn James Allen Woodall ("Petitioner") filed a Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel. On July 27, 2010, the Court denied Petitioner's Motion for Appointment of Counsel. On December 7, 2010, Petitioner filed a Renewed Motion for Appointment of Counsel.

Petitioner's first Motion for Appointment of Counsel requested that Attorney Kurt David Hermansen be appointed to represent him in this proceeding because Mr. Hermansen was appointed to represent him in an appeal from an order denying a separate Petition for Writ of Habeas Corpus. Further, Petitioner alleged that he required counsel to be appointed for him because the case was

1 complex, and an appointed attorney could more effectively obtain and
 2 use discovery in this proceeding than he could.

3 In Petitioner's Renewed Motion for Appointment of Counsel,
 4 Petitioner cites the same reasons for his request. Further, he adds
 5 that he can not afford an attorney to represent him in this
 6 proceeding and that he has limited law library access at the prison
 7 where he is incarcerated.

8 The Sixth Amendment right to counsel does not extend to
 9 federal habeas corpus actions by state prisoners. McCleskey v.
 10 Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191,
 11 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th
 12 Cir. 1986). However, financially eligible habeas petitioners
 13 seeking relief pursuant to 28 U.S.C. § 2254 may obtain representa-
 14 tion whenever the court "determines that the interests of justice so
 15 require.'" 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 1995); Terrovona
 16 v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley,
 17 730 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d
 18 469, 471 (8th Cir. 1994).

19 The interests of justice require appointment of counsel when
 20 the court conducts an evidentiary hearing on the petition.
 21 Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah v.
 22 Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8(c), 28 U.S.C. foll.
 23 § 2254. The appointment of counsel is discretionary when no
 24 evidentiary hearing is necessary. Terrovona, 912 F.2d at 1177;
 25 Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

26 In the Ninth Circuit, "[i]ndigent state prisoners applying
 27 for habeas relief are not entitled to appointed counsel unless the
 28 circumstances of a particular case indicate that appointed counsel

1 is necessary to prevent due process violations." Chaney, 801 F.2d
 2 at 1196; Knaubert, 791 F.2d at 728-29. A due process violation may
 3 occur in the absence of counsel if the issues involved are too
 4 complex for the petitioner. In addition, the appointment of counsel
 5 may be necessary if the petitioner has such limited education that
 6 he or she is incapable of presenting his or her claims. Hawkins v.
Bennett, 423 F.2d 948, 950 (8th Cir. 1970).

8 In the Eighth Circuit, "[t]o determine whether appointment of
 9 counsel is required for habeas petitioners with non-frivolous
 10 claims, a district court should consider the legal complexity of the
 11 case, the factual complexity of the case, the petitioner's ability
 12 to investigate and present his claim, and any other relevant
 13 factors." Abdullah v. Norris, 18 F.3d at 573 (citing Battle v.
Armontrout, 902 F.2d 701, 702 (8th Cir. 1990)); Hoggard, 29 F.3d at
 14 471; Boyd v. Groose, 4 F.3d 669, 671 (8th Cir. 1993); Smith v.
Groose, 998 F.2d 1439, 1442 (8th Cir. 1993); Johnson v. Williams,
 15 788 F.2d 1319, 1322-23 (8th Cir. 1986).

16 Since these factors are useful in determining whether due
 17 process requires the appointment of counsel, they are considered to
 18 the extent possible based on the record before the Court. Here,
 19 Petitioner has sufficiently represented himself to date. From the
 20 face of the Petition filed *pro se*, and from other documents that
 21 Petitioner has filed *pro se*, it appears that Petitioner has a good
 22 grasp of this case and the legal issues involved. Under such
 23 circumstances, a district court does not abuse its discretion in
 24 denying a state prisoner's request for appointment of counsel as it
 25 is simply not warranted by the interests of justice. See LaMere v.
Risley, 827 F.2d 622, 626 (9th Cir. 1987). At this stage of the

1 proceedings, the Court finds that the interests of justice do not
 2 require the appointment of counsel.

3 The Court also notes that "[w]here the issues involved can be
 4 properly resolved on the basis of the state court record, a district
 5 court does not abuse its discretion in denying a request for court-
 6 appointed counsel." Hoggard, 29 F.3d at 471; McCann v. Armontrot,
 7 973 F.2d 655, 661 (8th Cir. 1992); Travis v. Lockhart, 787 F.2d 409,
 8 411 (8th Cir. 1986) (per curiam) (holding that district court did
 9 not abuse its discretion in denying § 2254 habeas petitioner's
 10 motion for appointment of counsel where allegations were properly
 11 resolved on basis of state court record). At this stage of the
 12 proceedings, it appears the Court will be able to properly resolve
 13 the issues involved on the basis of the state court record.

14 "The procedures employed by the federal courts are highly
 15 protective of a pro se petitioner's rights. The district court is
 16 required to construe a pro se petition more liberally than it would
 17 construe a petition drafted by counsel." Knaubert, 791 F.2d at 729
 18 (citing Haines v. Kerner, 404 U.S. 519, 520 (1972) (holding pro se
 19 complaint to less stringent standard) (per curiam)); Bashor, 730
 20 F.2d at 1234. The Petition in this case was pleaded sufficiently to
 21 warrant this Court's order directing Respondent to file an answer or
 22 other responsive pleading to the Petition.

23 "The district court must scrutinize the state court record
 24 independently to determine whether the state court procedures and
 25 findings were sufficient." Knaubert, 791 F.2d at 729; Richmond v.
 26 Ricketts, 774 F.2d 957, 961 (9th Cir.1985); Rhinehart v. Gunn, 598
 27 F.2d 557, 558 (9th Cir.1979) (per curiam); Turner v. Chavez, 586
 28 F.2d 111, 112 (9th Cir.1978) (per curiam). Even when the district

1 court accepts a state court's factual findings, it must render an
 2 independent legal conclusion regarding the legality of a peti-
 3 tioner's incarceration. Miller v. Fenton, 474 U.S. 104, 112
 4 (1985). The district court's legal conclusion, moreover, will
 5 receive de novo appellate review. Hayes v. Kincheloe, 784 F.2d
 6 1434, 1436 (9th Cir. 1986).

7 The assistance counsel provides is valuable. "An attorney
 8 may narrow the issues and elicit relevant information from his or
 9 her client. An attorney may highlight the record and present to the
 10 court a reasoned analysis of the controlling law." Knaubert, 791
 11 F.2d at 729. However, as the court in Knaubert noted: "unless an
 12 evidentiary hearing is held, an attorney's skill in developing and
 13 presenting new evidence is largely superfluous; the district court
 14 is entitled to rely on the state court record alone." Id. (citing
 15 Sumner v. Mata, 449 U.S. 539, 545-57 (1981), and 28 U.S.C.
 16 § 2254(d)). Because this Court denies Petitioner's motion for
 17 appointment of counsel, it must "review the record and render an
 18 independent legal conclusion." Id. Moreover, because the Court
 19 does not appoint counsel, it must "inform itself of the relevant
 20 law. Therefore, the additional assistance provided by attorneys,
 21 while significant, is not compelling." Id.

22 If an evidentiary hearing is required, Rule 8(c) of the Rules
 23 Governing Section 2254 Cases requires that counsel be appointed to
 24 a petitioner who qualifies under 18 U.S.C. § 3006A(a)(2)(B). Rule
 25 8(c), 28 U.S.C. foll. § 2254; see Wood v. Wainwright, 597 F.2d 1054
 26 (5th Cir. 1979). In addition, the Court may appoint counsel for the
 27 effective utilization of any discovery process. Rule 6(a), 28
 28 U.S.C. foll. § 2254. For the above-stated reasons, the "interests

1 of justice" in this matter do not compel the appointment of counsel.
2 Accordingly, Petitioner's Motion for Appointment of Counsel is
3 **DENIED** without prejudice.

4 IT IS SO ORDERED.

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6 DATED: December 9, 2010

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10 Hon. William V. Gallo
11 U.S. Magistrate Judge
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